

1 CAMPEAU GOODSSELL SMITH
A Law Corporation
2 SCOTT L. GOODSSELL, SBN 122223
440 N. First Street, Suite 100
3 San Jose, California 95112
(408) 295-9555

4 Attorneys for Reorganized Debtor

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7 UNITED STATES BANKRUPTCY COURT
8 FOR THE NORTHERN DISTRICT OF CALIFORNIA

9 In re:) Case No. 03-56788-ASW
10)
TELEPATH CORPORATION,) CHAPTER 11
11)
12 Debtor.) Date: August 31, 2009
Time: 2:15 p.m.
13) Court: Hon. Arthur S. Weissbrodt
280 S. First Street, Court 3020
San Jose, CA
14

15 **DEBTOR'S OBJECTION TO LOGAN LAW FIRM FINAL FEE APPLICATION**

16 Debtor TELEPATH CORPORATION hereby OBJECTS to the Logan Law Office
17 final fee application, and represents as follows:

18 **INTRODUCTION**

19 As Practice Administrator for the Logan Law Office, attorney Seid is suggesting that
20 this Court undertake a dangerous and inconsistent precedent: in lieu of actual time records,
21 attorney Seid has "guesstimated" attorney Logan's unrecorded time by estimating his time
22 "probably expended" - by reviewing 3 volumes out of 8 volumes of Logan office files for
23 estimated time, then "guesstrapolating" the same time expended to the remaining 5 volumes.

1 If this "guesstimating" procedure is permitted in this case, it will be difficult to deny
2 compensation to any other professional who – by virtue of laziness, incompetence or simply lack
3 of attention – seeks to fling a sum at the Court unsupported by competent timekeeping records.

4 Telepath has other particular objections, to be sure, but attorney Seid cannot simply
5 create recorded time where none exists – and the peculiar circumstances relating to the Logan
6 Law Offices in this case cannot justify allowance of "speculative time billing" to be accepted.

7 **OBJECTIONS**

8 Telepath's objections to the instant Logan Law Office fee application can be reduced to
9 three basic categories: (1) billings calculated at higher-than-contract rates, (2) billings based on
10 attorney Seid's guesstimates and extrapolations, and (3) unnecessary costs/delay in presenting
11 Telepath's reorganization plan.

12 **1. FEE APPLICATION RATES ARE NOT CONTRACT RATES**

13 As set forth in Aaron Ettinger's declaration, when he engaged the Logan Law Office in
14 October 2003, *the contractually agreed billing rate for Charles Logan was \$300.00 per hour*
15 *and for Susan Luce was \$275.00 per hour.* Although the Contract provides that rates were
16 "subject to change on 20 days' written notice," Telepath never received a single billing statement
17 from Logan nor did Telepath ever receive any notice of any rate change from Logan throughout
18 this case. Telepath is advised that attorney Seid does not dispute Ettinger's statement.

19 Nonetheless, the Logan Law Office fee application presented seeks compensation for
20 Charles Logan at rates ranging from \$300.00 - \$350.00 per hour and for Susan Luce at rates
21 ranging from \$275.00 - \$375.00 per hour¹.

22 ¹The Logan fee application states that attorney Logan's billing rate ranged from \$300.00 -
23 \$350.00/hour and attorney Luce's from \$275.00 - \$325.00/hour, but review of the pre-
billing statements shows that much of attorney Luce's time was billed at \$375.00/hour.

1 If the Logan Law Office *actual time records pre-billing statements* (Exhibit C) were
2 recast at the correct contract billing rates, the sum due would be *reduced by \$8,307.50*.

3 If the Logan Law Office *guesstimated Docket Analysis time calculations* (Exhibit D)
4 were recast at the correct contract billing rates, the sum due would be *reduced by \$9,350.00*.

5 If the Logan Law Office *guesstimated Rendler time calculations* (Exhibit E) were
6 recast at the correct contract billing rates, the sum due would be *reduced by \$330.00*.

7 If the Logan Law Office *extrapolated time calculations* (Exhibit F) were recast at the
8 correct contract billing rates, the sum due would be *reduced by \$3,510.00*.

9 ***Total reductions based on applying Contract fee rates should be \$21,497.50.***

10 **2. "GUESSTIMATED TIME" IS NOT REAL TIME**

11 Of the \$182,933.02 sum sought by the Logan Law Offices, *only \$64,473.03²* is
12 supported by contemporaneous time records or cost records. The remaining \$118,459.99 sum is
13 essentially "made up" by attorney Seid.

14 Attorney Seid utilizes three processes to create billable time for attorney Logan.

15 ***First, in Exhibit D***, she reviewed the Court's Docket for filed pleadings and assigned
16 attorney Logan billable time for various selected events. For example, she assigned 10 hours for
17 attorney Logan to prepare Telepath's Voluntary Petition, Statement of Affairs and Schedules, and
18 assigned another 0.5 hours for amending schedules. This is a random guess because we do not
19 know how much actual time attorney Logan spent in preparing these documents or how much
20 not-billable time was spent by his staff in preparing these documents. Likewise, attorney Seid has

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22 ²The \$64,473.03 sum is derived from actual time records (\$45,887.50) plus actual costs
23 (\$14,342.23) plus supplemental fee application charges (\$4,207.30 fees + 35.99 costs).
The supplemental fee application fees are unsupported by any time records. The actual
time records sum of \$45,887.50 is computed using non-contract rates, as described above.

1 assigned 0.9 hours for drafting 4 bankruptcy Notices (likely prepared by attorney Logan's staff)
2 which includes 0.2 hours for a Notice of Time Change for Meeting of Creditors (likely prepared
3 by attorney Logan's staff). Because attorney Seid has assigned time to attorney Logan for time
4 likely spent by his staff's activities, Telepath questions those "assignments" by attorney Seid.

5 Further, some assigned time seems unlikely: for example, 1.5 hours in "attorney" for
6 Docket entry 322 for Application to Employ Miller Morton as Special County followed by 0.5
7 additional hours for Docket entry 323 for Order Granting Application to Employ Miller Morton.
8 Every MOR in "MOR" required 0.4 hours for attorney Logan review and 0.1 hours for him to
9 prepare an identical monthly proof of service (likely done/mailed out by staff without attorney
10 Logan's monthly involvement); total MOR review time under this process results in \$9,555.00
11 incurred in attorney Logan MOR review time, which seems highly excessive since the same
12 MORs were being prepared by accountant Siress and (at times) reviewed by attorney Luce also.
13 These "assignments" (and others) by attorney Seid appear so arbitrary as to be unreliable.

14 ***Second, in Exhibit E***, she reviewed attorney Rendler's fee application in Aaron
15 Ettinger's personal Chapter 13 case for telephone conferences/correspondence between attorney
16 Rendler and attorney Logan. While these contemporaneous time records (of attorney Rendler)
17 are more reliable than "guesstimates" by attorney Seid, many relate to Timeslot Trunking; there is
18 no indication that attorney Seid cross-referenced the Timeslot Trunking fee application to
19 eliminate any possibility of double-billing for the same conversations/correspondence.

20 There are examples of double-billing for the same hearings: attorney Seid assigns 1.5
21 hours for attorney Logan's attendance at the 8/30/05 continued hearing in the Ajlouni matter in
22 Exhibit D (Exhibit D 13, p. 13), and she assigns 1.0 hours for attorney Logan's attendance at the
23 same 8/30/05 continued hearing in the Ajlouni matter in Exhibit E (Exhibit E, p. 2). This example

1 demonstrates the danger of departing from an accounting-system based time-keeping to
2 "guesstimations" – duplication of "guesses" creates inherent unreliability and duplication risks.

3 *Third, in Exhibit F*, she performed a "limited review" of 3 volumes of the Logan
4 firm's general case files and "extrapolated" those conclusions to the remaining 4 volumes. This
5 procedure is both unreliable and wholly inconsistent with Bankruptcy law and local Guidelines.

6 In order to adequately review any fee application, this Court must be able to review
7 and evaluate individual time entries for particular events; "time-keeping extrapolation" prevents
8 the Court from conducting any reasonable review of attorney actual activities. For example, if the
9 Court were to take the first month's (or first week's) billings in any Chapter 11 case, and
10 "extrapolate" that billing experience to the remainder of the 2-5 year Chapter 11 case, the
11 extrapolated sum would undoubtedly greatly exceed the actual time billed during that case –
12 because the first month (or week) is generally far more intense than any other part of the Chapter
13 11 case excepting only plan confirmation at the end of the case. Thus, the Court would never
14 allow any Chapter 11 professional to "extrapolate" his time from a "sample" of his activities.

15 In this particular case, attorney Seid appears to have reviewed correspondence files
16 from the early period of this case (10/03-12/04), and then "extrapolated" forward the remaining 3
17 years (1/05-9/08); but in actuality, for the last 2 years of this case, attorney Luce WAS keeping
18 her own time records and she WAS the primary attorney working on this Chapter 11 case. So the
19 "extrapolation" seriously misrepresents actual Logan firm activities and timekeeping.

20 While this process might have been more economical for attorney Seid, it leaves
21 Telepath and this Court with no reasonable means to evaluate the claims being made for attorneys
22 fees on behalf of the Logan firm. Further, this process is wholly unacceptable under the Local
23 Guidelines and under Bankruptcy procedure and *all such "extrapolations" must be disallowed.*

1 **B. 'GUESSTIMATED TIME" CANNOT BE AUDITED**

2 If the Logan firm had sent ANY billing statements to Telepath, Telepath could well
3 have been expected to raise an objection or question time spent or allocated. But over the course
4 of the 5 years during which the Logan firm represented Telepath, Telepath never received a single
5 billing statement. Ergo, Telepath has never been apprized of any debt to the Logan firm, or of
6 attorney Logan's expectations for payment, or in what sum. Telepath did not, however, intend to
7 grant the Logan firm a blank check without ability to review that firm's proposed reckoning.

8 Now, through attorney Seid, the Logan firm has proffered a final fee application which
9 may or may not comport with attorney Logan's actual time expended in this case. Rather, the fee
10 application represents what attorney Seid thinks attorney Logan may have intended to bill, but
11 without any time records supporting what attorney Logan may actually have done.

12 It is impossible for Telepath or its counsel to recreate attorney Seid's thought
13 processes as she assigned time for attorney Logan's supposed activities in this case -- without
14 deposing attorney Seid. As she states: "The PA [attorney Seid] has found no physical evidence
15 for determining the likely time expended on such matters. The PA has no located any relevant
16 calendars or diaries for Logan." Ergo, attorney Seid's guesstimations concerning attorney
17 Logan's activities are subject to review only through her cross-examination by Telepath.

18 **C. IF YOU REALLY NEED TO GUESS . . .**

19 Telepath does not in any way consent or acknowledge that "guesstimation" or
20 "guesstimated extrapolation" can substitute in any way for actual contemporaneous time records.

21 However, if anyone could reasonably project what the Logan firm's attorneys
22 fees/costs should have been, the most knowledgeable remaining individual would probably be
23 attorney Luce, who worked with attorney Logan on the Telepath matter. As set forth in Aaron

1 Ettinger's declaration, in September 2008 when he queried attorney Susan Luce regarding how
2 much Telepath had incurred in attorneys fees, she said that *she "couldn't imagine that it would*
3 *be more than \$100,000."*

4 The guesstimated fee application prepared by attorney Seid is almost twice that sum.

5 **3. WHERE WAS TELEPATH'S REORGANIZATION PLAN?**

6 As set forth in Aaron Ettinger's declaration, once the Ajlouni matter was resolved in
7 mid-2005, Telepath was freed to proceed to a prompt reorganization. However, no Telepath
8 reorganization plan was forthcoming from the Logan Law Office.

9 In the Logan Law Office fee application, the firm represents that it "worked with the
10 Debtor and its accountant to develop a feasible plan of reorganization and prepared Telepath's
11 draft plan and disclosure statement." (Fee App., p. 4). Actually, no draft plan was ever found³ –
12 only a draft disclosure statement with significant factual errors and an agreed cashflow projection
13 as described in Aaron Ettinger's declaration, upon which the disclosure statement was premised.

14 Beyond stating the foregoing conclusion, the fee application attributes no specific
15 attorney time to this effort; rather, such attorney time is buried in the fee application as "General
16 Administrative Matters." (Fee App., p. 9). When such time is teased out from the other matters
17 lumped into that category, attorney time dedicated to plan/disclosure statement issues totals 102.3
18 hours; *the total sum billed for such activities is \$34,372.50*⁴. Since no plan was found and major
19 changes were required for the draft disclosure statement, this sum should be reduced by half.

21 ³Although various entries on the Logan pre-billing worksheet reference drafting and/or
22 modifying a "plan" (distinct from "disclosure statement"), no draft plan was ever found in
23 the Logan office files and no draft plan was ever provided to Telepath's principals – so if it
once existed, it was of no utility to Telepath or its subsequent bankruptcy counsel.

⁴All time billed is by attorney Luce at rates (\$325/\$375) exceeding contract billing rates.

1 From March 2006 until September 2008, attorney Logan apparently filed 10 Status
2 Conference Statements and attended 10 Case Status Conferences hearings in this matter, to which
3 attorney Seid has assigned 0.5 hours for attorney Logan to prepare each status conference
4 statement and has assigned 0.5 hours for attorney Logan to attend each status conference.
5 Some/many status conference statements were identical from hearing-to-hearing and undoubtedly
6 attorney Logan attended status conference hearings for more than one client at a time. However,
7 as set forth in Aaron Ettinger's declaration, these continuances and continuances seriously and
8 unnecessarily damaged Telepath's reorganization efforts and were conducted primarily for
9 attorney Logan's convenience to Telepath's detriment. The attorneys fees attributable to these
10 delays should not be borne by Telepath, and *the fee application should be reduced by \$3,430.00.*

11 SUMMARY

12 This fee application seeks to have this Court make a fateful decision: either actual
13 contemporaneous time records are mandatory – or after-the-fact guesstimations are sufficient.
14 This Court should require professionals to behave professionally: it is no penalty to require
15 professionals to keep time records to comply with the Local Guidelines, and those who choose
16 otherwise do so at their own risk. *In this case, all "guesstimated" and "extrapolated" fees*
17 *should be denied, and actual contemporaneous time records allowed at their contracted rates.*

18 Dated: August 25, 2009

CAMPEAU GOODSSELL SMITH

20 By /s/ Scott L. Goodsell
21 Scott L. Goodsell
22 Attorneys for Reorganized Debtor
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